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June 2, 1999

EX PARTE

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 92-237  
NSD File No. 98-151

Dear Ms. Salas:

On May 20, 1999, Mitretek Systems ("Mitretek") submitted an *ex parte* notification ("Mitretek Letter") that included inaccurate and/or incomplete information related to the proposed transfer of the Lockheed Martin IMS Communications Industry Services business ("CIS"),<sup>1</sup> currently the North American Numbering Plan Administrator ("NANPA"), from Lockheed Martin IMS to an affiliate of Warburg Pincus & Co. ("Warburg Pincus"). The information provided in an attachment to the Mitretek Letter focused on certain Warburg Pincus holdings. By and through its undersigned counsel, Warburg Pincus submits this response in an effort to ensure an accurate record by correcting and updating certain factual assertions made in the Mitretek Letter attachment.

Warburg Pincus provides the following information as of the end of the first quarter of 1999 to correct these statements.

**Covad:** The attachment to the Mitretek Letter states that Warburg Pincus owns 34 percent of Covad. However, Warburg Pincus previously reported to the Commission that "Covad has filed a registration statement in connection with an initial public offering in the near future, reducing to approximately 25 percent Warburg Pincus"

<sup>1</sup> In the proposed transaction, CIS will be merged with and into the CIS Acquisition Corporation ("CISAC").

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existing 33 percent indirect holding in Covad."<sup>2</sup> Covad recently conducted the aforementioned initial public offering, and Warburg Pincus now holds approximately 20 percent of the outstanding stock of the company.

**Esprit Telecom Group:** The attachment to the Mitretek Letter states that Warburg Pincus owns 12 percent of Esprit Telecom Group. However, in the Request Warburg Pincus stated that its indirect approximate 12 percent interest in Esprit would fall to below five percent upon the closing of the acquisition of Esprit by Global Telesystems Group, Inc. ("GTS").<sup>3</sup> Warburg Pincus subsequently stated that the GTS transaction had closed and that "Warburg Pincus' previous 12 percent interest in Esprit has been converted to approximately a two percent interest in GTS."<sup>4</sup> Warburg Pincus has now divested its entire interest in the GTS stock.

**NTL:** Warburg Pincus' interest in NTL has decreased to a less than 1 percent interest in the company. This interest is not attributable under the FCC's neutrality rules.

As previously demonstrated, these interests held by Warburg Pincus do not present a threat of undue influence

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<sup>2</sup> "Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business," at 16, filed by Lockheed Martin IMS Corporation and Warburg, Pincus & Co. on December 21, 1998 ("Request").

<sup>3</sup> See Request at 17.

<sup>4</sup> "Supplemental Response to North American Numbering Council Regarding the Transfer of NANPA Responsibilities," at 2, attached to Letter of Jeffrey E. Ganek, Senior Vice-President and Managing Director, Lockheed Martin IMS, to Mr. Alan Hasselwander, Chairman, North American Numbering Council, dated March 22, 1999. Mr. Ganek's letter was attached to Letter of Alan Hasselwander to Lawrence E. Strickling, Chief, Common Carrier Bureau, dated March 31, 1999.

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over numbering resource administration, and therefore, do not render Warburg Pincus non-neutral for NANPA purposes.<sup>5</sup>

The other holdings "in various Warburg [Pincus] funds" referenced in the Mitretek Letter attachment are holdings of mutual funds managed by Warburg Pincus Asset Management ("WPAM"). As Warburg Pincus and Lockheed Martin have explained in previous filings, the nature of WPAM as an institutional money manager ensures that its telecommunications holdings will not result in undue influence on the NANPA's number administration activities by an entity with a vested interest in such activities. Moreover, Warburg Pincus previously disclosed on February 15, 1999, an agreement to sell WPAM to Credit Suisse Asset Management (the "CS Transaction"). Following the closing of the CS Transaction, Warburg Pincus' asset management business will be separately owned and operated by the asset management affiliate of Credit Suisse Group. The CS Transaction is expected to close on July 1, 1999.

In its recommendation letter to the FCC, the North American Numbering Council ("NANC") correctly found that CISAC would not be subject to undue influence by parties with a vested interest in the outcome of numbering administration activities.<sup>6</sup> In making this determination, the NANC relied upon the voluntary commitments made by Lockheed Martin and Warburg Pincus addressing the ongoing neutrality of CISAC. Contrary to Mitretek's assertion in the May 20 document, these commitments (e.g. the Code of Conduct) were not imposed by the NANC, but rather voluntarily were proposed and committed to by Warburg Pincus and Lockheed Martin as further assurances of ongoing NANPA neutrality.

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<sup>5</sup> The 5 percent continuing interest held by Lockheed Martin in CISAC is not attributable under the FCC's rules and presents no threat whatsoever of undue influence. Moreover, Lockheed Martin's interest will not provide it with any control over CISAC, nor will it provide the authority or ability to influence the day-to-day operations of the NANPA.

<sup>6</sup> See Letter from Alan Hasselwander, Chairman, North American Numbering Council to Lawrence Strickling, Chief, Common Carrier Bureau, dated March 31, 1999 at 1.

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It also bears repeating that a rote recitation of ownership percentages is insufficient to determine whether the neutrality requirements set forth in §52.12 of the Commission's rules are met. Both the FCC's rules and practice in applying those rules demonstrate that *de facto* neutrality is the ultimate goal of the FCC's rules and that structural ownership limitations are only one means of achieving that result. A neutrality analysis is incomplete if it consists only of ascertaining whether an entity with an ownership interest in the NANPA or LNPA has any interests in telecommunications carriers that exceed a certain threshold. Owning an interest in a telecommunications service providers does not necessarily impair the neutrality of the entity with such an interest. Rather, a finding that the NANPA is neutral within the meaning of the FCC's rules governing the administration of numbering resources must take into account a number of factors including whether the owner is a strategic operator or a financial investor, the nature and structure of an entity's investment strategy and business practices, or codes of conduct, the size of potentially conflicting investments as compared to the remainder of the investment portfolio, and the extent to which potentially conflicting investments make use of numbering resources, among others. Consideration of these factors supports the conclusion that CISAC, as a wholly independent company, will remain neutral under Warburg Pincus ownership.

The restructured CIS will be highly responsive to the neutrality requirements and other needs of the FCC and its customers. It will be a free standing, independent company, whose mission is the provision of reliable, neutral services. The neutrality provisions of the FCC's rules will be retained in their current form, and the FCC's ability to enforce those provisions will be strengthened through the Code of Conduct commitments of CISAC and Warburg Pincus.<sup>7</sup>

As Lockheed Martin and Warburg Pincus have demonstrated, the transfer of CIS to an affiliate of Warburg Pincus is in the best interests of the public and

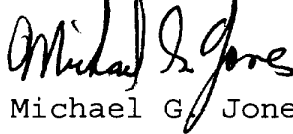
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<sup>7</sup> The Code of Conduct commitments voluntarily assumed by CISAC and Warburg Pincus go well beyond any requirements placed originally upon Lockheed Martin as the NANPA.

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the telecommunications industry. Under Warburg Pincus, the NANPA will not be subject to undue influence from any telecommunications service provider. Warburg Pincus' status as a committed financial investor, combined with the Code of Conduct and other safeguards specified in previous filings, render it the most stable source of neutral, impartial financial ownership and support for the NANPA. The FCC should, as expeditiously as possible, approve the proposed transfer.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael G. Jones". The signature is stylized with a large, looped "M" and a cursive "Jones".

Michael G. Jones

cc: Lawrence E. Strickling, Chief, Common Carrier Bureau  
Jordan Goldstein, Common Carrier Bureau  
Anna Gomez, Common Carrier Bureau  
Yog Varma, Common Carrier Bureau  
Diane Harmon, Common Carrier Bureau  
Tejal Mehta, Wireless Telecommunications Bureau